IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5204 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANJIBHAI AMARSINH PATEL

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR KUKESH A PATEL AGP for Respondents No. 1 & 2.

MR BD KARIA for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/04/2000

ORAL JUDGEMENT

1. The challenge has been made by the petitioner in this petition to the order dated 8.5.1997 under which the respondent no.1 has directed the respondent no. 2 to give the priority in the matter of grant of the lease for

extraction of salt from the land in dispute to the respondent no.3 as a special case. It is the case of the petitioner that his application was prior in time and according to the Government Resolution dated 31st March, 1981 he has priority in matter of grant of lease. The respondent no.2 has recommended for grant of lease in respect of the subject land in favour of the petitioner but at the higher level i.e. at the level of the State Government, the respondent no.3 has been favoured.

2. The learned counsel for the respondent State contended that as the respondent no.3 has shown its willingness to instal an export oriented unit and it is contended to be a special case and accordingly impugned order has been passed. On this, the counsel for the petitioner submits that this is nothing but only a device and means to favour the respondent no.3, none other then by the State Government. The learned counsel for the petitioner submits that the petitioner should have been asked by the respondent no.1 whether he is ready and willing to instal export oriented unit or not, which has not been done in this case.

3. Having given my thoughtfull consideration to the rival contentions made by the learned counsel for the parties and going throght the contents of the Special Civil Application I am satisfied that this petition deserves to be disposed of with a direction to the respondent no.1 to consider the matter afresh after giving opportunity of hearing to all the concerned parties i.e. the petitioner and respondent no.3.

4. In the impugned order no reason or ground has been mentioned for granting of relief and extending the favour to the respondent no.3 except to state that he has been preferred as a special case. The application of the petitioner for extraction of the salt was admittedly prior in time. It is also not in dispute that the respondent no.2 has recommended for grant of the land of the area for extraction of the salt in favour of the petitioner. Before respondent no.3 could have been given the preference over the petitioner in this matter, it is necessary as well as obligatory on the part of the State Government to give out the grounds and the reasons in support of its order. It is true even if the reasons and grounds are not given in the impugned order in support thereof only on this ground the order can not be set aside if the relevant grounds and reasons are being recorded by the authority in the file and the same is produced for perusal of the Court. In this case, the respondents no.1 and 2 have not bothered and care to file

the reply to the Special Civil Application. So, the reasons and grounds to favour the respondent no.3 over the petitioners have not been brought on the record of the case. They have also not produced relevant file of the case. In the absence of reply to the Special Civil Application and more so, the relevant file of the case the only inference which is following therefrom that it is nothing but only an order which has been made with the object and purpose to favour the respondent no.3. Orally reasons which has been given out in support of the impugned order by the learned counsel for the respondents no. 1 and 2 cannot be accepted. In such matters it is a duty of the officers while passing the order to briefly record reasons and grounds in support thereof.

5. In the result, this Special Civil Application is disposed of in term that the respondent no.1 shall consider the matter afresh in accordance with law and after giving an opportunity of hearing to the petitioner and respondent no.3 and decide the same within a period 2 months from the date of writ of this order. This Special Civil Application and Rule stand disposed of accordingly with no order as to costs.

(S.K.Keshote,J)

(Vipul)